



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,153	11/25/2003	Pat Inglese	21480-RA	7010

30184 7590 12/01/2004

MYERS & KAPLAN, INTELLECTUAL PROPERTY LAW, L.L.C.
1899 POWERS FERRY ROAD
SUITE 310
ATLANTA, GA 30339

EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
----------	--------------

3727

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/722,153

Applicant(s)

INGLESE, PAT

Examiner

Robin A. Hylton

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-109 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 15-21, 24-30, 32-39, 47-53, 56-62, 79-85, 88-94, 96, 108 and 109 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2-26-04</u> . | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims withdrawn from consideration are 8-14,22,23,31,40-46,54,55,63,72-78,86,87,95 and 97-106.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of the election of species in the reply filed on September 3, 2004 is acknowledged. The traversal is on the ground(s) that the examiner did not provide evidence of a burdensome search based upon a different search or different classification. This is not found persuasive because applicant did point out an error in the election of species requirement and because an (initial) election of species requirement does not require evidence as such. However, a burdensome search has several components: time and classification.

In the instant application, the various species are classified in different areas and, by default, creates a more time consuming and burdensome search. The embodiment requiring a vent is classified in 383/103. The embodiment requiring an inflatable device is classified in 383/3 and additionally requires a search in class 445. The embodiment requiring a tube is classified in 141/388. These structural features require a search not required by the devices not having these features.

Applicant has also admitted in the response that the rectangular and round openings of the various embodiments of the device are patentably distinct. Therefore, one can be used to reject the other as set forth. See MPEP 809.02.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 8-14,22,23,31,40-46,54,55,63-78,86,87,95, and 97-106 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on September 3, 2004.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3727

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-7, 15, 17, 19, 21, 24-30, 32-39, 47, 49, 51-53, 56-59, 79, 81, 83-85, 88-91, 96, 108 and 109 are rejected under 35 U.S.C. 102(b) as being anticipated by LaFleur (US 5,607,237). See figure 1 depicting horizontal reinforcing strips extending around the periphery of the top.

5. Claims 1, 15-17, 19-21, 24-27, 32, 33, 47-49, 51-53, 56-59, 79-81, 83-85, 88-91, 96, 108 and 109 are rejected under 35 U.S.C. 102(b) as being anticipated by van de Pol (US 4,664,957). Figure 1 depicts reinforcement around the periphery of the device top.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 18, 50, and 82 are rejected under 35 U.S.C. 103(a) as being unpatentable over LaFleur.

LaFleur teaches the claimed device except is silent regarding reinforcement around the periphery of the opening.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to additionally apply reinforcement around the periphery of the opening. Doing so ensures the opening remains open during filling.

8. Claims 28-30, 60-62 and 92-94 are rejected under 35 U.S.C. 103(a) as being unpatentable over LaFleur in view of Marino (US 5,339,872).

LaFleur teaches the claimed device except for extension straps through the loops.

Art Unit: 3727

Marino teaches it is known to provide extension straps through the loops of the filling device.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of extension loops to the device of LaFleur. Doing so provides a secure attachment between the device and the filling equipment during the filling process to eliminate spillage.

Regarding claims 29,61 and 93, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize bungee straps to secure the device to the filling equipment since the examiner takes Official Notice of the equivalence of adjustable straps and bungee straps for their use in the bag art and the selection of any of these known equivalents to would be within the level of ordinary skill in the art. Substituting the bungee straps allows for automatic adjustment of the strap lengths upon securement of one strap end to the filling equipment.

9. Claims 28-30, 60-62 and 92-94 are rejected under 35 U.S.C. 103(a) as being unpatentable over van de Pol in view of Marino (US 5,339,872).

Van de Pol teaches the claimed device except for extension straps through the loops.

Marino teaches it is known to provide extension straps through the loops of the filling device.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of extension loops to the device of van de Pol. Doing so provides a secure attachment between the device and the filling equipment during the filling process to eliminate spillage.

Regarding claims 29,61 and 93, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize bungee straps to secure the device to the filling equipment since the examiner takes Official Notice of the equivalence of adjustable straps and

Art Unit: 3727

bungee straps for their use in the bag art and the selection of any of these known equivalents to would be within the level of ordinary skill in the art. Substituting the bungee straps allows for automatic adjustment of the strap lengths upon securement of one strap end to the filling equipment.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

11. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

12. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-9306 on the date shown below:

Typed or printed name of person signing this certificate

Signature_____

Date_____

Art Unit: 3727


13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner works a part-time schedule and can normally be reached on Monday - Friday from 9:00 a.m. to 1:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (571) 272-4549.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148 or may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAH
November 27, 2004


Robin A. Hylton
Primary Examiner
GAU 3727